Paper No. 17

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte JAMES S. HOLTROP and CAREY D. WIDDER

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Appeal No. 2000-1607
Application No. 09/084,486

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ON BRIEF

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Before CALVERT, ABRAMS, and NASE, Administrative Patent Judges.

ABRAMS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 1-5, which are all of the claims of record.

We REVERSE.

BACKGROUND

The appellants' invention relates to a mat for removing cat litter from the paws of a cat. The claims on appeal have been reproduced in the appendix to the appellants' Brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Ballard	5,429,073	Jul. 4, 1995
Reynolds	5,830, 080	Nov. 3, 1998 (filed Jun. 24, 1997)

Claims 1 and 5/1 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Reynolds.

Claims 2, 3, 4, 5/2, 5/3, and 5/4 stand rejected under 35 U.S.C. § 103 as being unpatentable over Reynolds in view of Ballard.

Rather than reiterate the conflicting viewpoints advanced by the examiner and the appellants regarding the above-noted rejections, we make reference to the Answer (Paper No. 10) for the examiner's complete reasoning in support of the rejections, and to the Brief (Paper No. 9) for the appellants' arguments thereagainst.

OPINION

In reaching our decision in this appeal, we have given careful consideration to the appellants' specification and claims, to the applied prior art references, and to the respective positions articulated by the appellants and the examiner. As a consequence of our review, we make the determinations which follow.

The problem to which the appellants' invention is directed is dislodging cat litter from the paws of a cat after it exits a litter box in order the prevent the litter from being deposited on the floor outside of the box. The appellants acknowledge that mats or pads on which a cat steps when exiting the litter box are known in the art, however, they assert that these mats comprise rigid upstanding spike-like projections that jab at the cat's sensitive paws, causing it to shy away from the litter box altogether. According to the appellants, their mat is more amenable to the liking of the animal using it. As manifested in claim 1, the sole independent claim, the invention comprises:

> A cat litter mat having flexible, paw-engaging projections formed of thermoplastic polyolefin elastomer.

It is the examiner's view that all of the subject matter recited in this claim is disclosed or taught by Reynolds, and therefore this reference anticipates the claim (Answer, page 3). In response to the appellants' arguments, it is the examiner's position that the statement in the preamble that the claim is directed to "[a] cat litter mat" is merely an intended use that is not entitled to be given patentable weight, and that the limitation

that the polyolefin is an "elastomer" is inherent in Reynolds in that the polyolefin disclosed is "imitative of grass," and therefore has elastomeric properties such as flexibility and spring (Answer, page 6).

It is axiomatic that anticipation is established only when a single prior art reference discloses, either expressly or under the principles of inherency, each and every element of the claimed invention.[1] In our view, such is not the case here, and therefore the rejection cannot be sustained. Our reasoning for arriving at this conclusion follows.

Claim 1 requires that the cat litter mat have "flexible, paw-engaging projections formed of thermoplastic polyolefin elastomer." The teaching of using a polyolefin elastomer for an upstanding element of a mat simply is not present in Reynolds. This reference is directed to a turf simulating surface for a golf practice tee, and discloses a "mat" comprising a first component that simulates two layers of natural soil and a second component supported by the first that simulates strands of grass. Reynolds describes the "pile layer," or grass (109), from which the golf ball is hit as being made of a polymer, "preferably nylon," that simulates the springiness of grass while being able to withstand the heat generated by the friction of the golf club passing through the layer, which can cause deterioration of the "grass" fiber. It is pointed out that polypropylene, for example, is twice as easily decomposed as nylon, and softens over time. See column 10, line 56 et seq.

[1] See In re Paulsen, 30 F.3d 1475, 1480-1481, 31 USPQ2d 1671, 1675 (Fed. Cir. 1994).

Polyolefin is mentioned as a fiber that "may be satisfactorily used" in the Reynolds invention (column 11, line 12; Table 3), but there is no explicit teaching that polyolefin elastomer[2] be used. The examiner opines that elastomeric properties for the "grass" component are inherently disclosed by Reynolds in columns 11 and 12, but we find no support for such a conclusion. Descriptive terminology such as "springy feel" (column 12, line 4), "effectively simulates the vegetative layer of grass" (column 12, lines 1 and 2), and "firm but pliable feel" (column 12, line 66), even if considered to apply to the simulated grass of the Reynolds mat (which in our opinion is not clear), do not establish that the simulated grass is an elastomer. Our conclusion that a polyolefin elastomer is not contemplated by Reynolds is supported first by the fact that "elastomeric" is used only in conjunction with the "turf-simulating core," the description of which begins in column 12 at line 58, and not the "grass," and second that Table 4, which lists a number of elastomeric polymers that can be used, does not include polyolefin.

The rejection of claim 1 as being anticipated by Reynolds is not sustained. Nor, it follows, will we sustain the like rejection of claim 5/1, which depends from claim 1.

Dependent claims 2, 3, 4, 5/2, 5/3 and 5/4 stand rejected as being unpatentable over Reynolds in view of Ballard. The second reference is cited for teaching animal

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[2]The common definition of elastomer is an elastic substance resembling rubber. See, for example, Merriam Webster's Collegiate Dictionary, Tenth Edition, 1996, page 370.

bedding comprising soft filaments of polymers such as polyolefin and polyethylene. The examiner expresses the view that one of ordinary skill in the art would have found it obvious to combine these two elements in the proportions recited in the claims here rejected "through routine tests and experimentation," and to utilize these in the Reynolds mat (Answer, pages 4 and 5). Be that as it may, considering the references in the light of Section 103,[3] the teachings of Ballard do not overcome the deficiency in Reynolds that was set out above in the discussion of the Section 102 rejection. This being the case, the rejection under Section 103 is not sustained.

SUMMARY

Neither rejection is sustained.

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[3]The test for obviousness is what the combined teachings of the prior art would have suggested to one of ordinary skill in the art. See, for example, In re Keller, 642 F.2d 413, 425, 208 USPQ 871, 881 (CCPA 1981).

The decision of the examiner is reversed.

REVERSED

IAN A. CALVERT Administrative Patent Judge	)))))) BOARD OF PATENT
NEAL E. ABRAMS Administrative Patent Judge	) APPEALS AND) INTERFERENCES
JEFFREY V. NASE Administrative Patent Judge	))))))

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APPEAL NO. 2000-1607 - JUDGE ABRAMS
APPLICATION NO. 09/040,245

APJ ABRAMS

APJ NASE

APJ CALVERT

DECISION: **REVERSED**

Prepared By:

DRAFT TYPED: 29 Apr 02

FINAL TYPED: